

## **MEMORANDUM**

**DATE:** April 28, 2010

**TO:** Katherine Vasquez, Rules Coordinator  
DSHS Rules and Policies Assistance Unit

**FROM:** Mike Tornquist, Program Manager  
Policy, Program Development and Training Unit  
Residential Care Services

**SUBJECT:** Small Business Economic Impact Statement and Cost-Benefit  
Analysis for Proposed Amendments to Chapter 388-76 WAC,  
Adult Family Homes

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The Residential Care Services Division is adopting amendments to WAC Chapter 388-76 WAC as expressly required by Initiative Measure No. 1029, Laws of 2009, ch. 580 so that these rules are consistent with the training and certification and fingerprint background check requirements that are set forth in Initiative 1029 and in Engrossed Second Substitute House Bill 2284 (E2SHB 2284) Chapter 361, Laws of 2007. Therefore, pursuant to RCW 19.85.025(3) and RCW 34.05.310(4)(e), a Small Business Economic Impact Statement (SBEIS) is not required pursuant to Chapter 19.85 RCW. Also, pursuant to RCW 34.05.328(5)(b), an evaluation of the costs and benefits of adoption of the rule pursuant to RCW 34.05.328 is not required. Nevertheless, the following analysis is provided for informational purposes.

### **SUMMARY OF PROPOSED RULES**

The Department of Social and Health Services' Residential Care Services (RCS) is proposing amendments to Chapter 388-76 WAC, Adult Family Homes.

The purpose of this proposed rule making is to implement Initiative Measure No. 1029 and Engrossed Second Substitute House Bill 2284 (E2SHB 2284) Chapter 361, Laws of 2007 as codified in Chapters 74.39A and 18.88B RCW.

Highlights of proposed changes:

- Revisions to be consistent with the terminology and training requirements in proposed Chapter 388-112 WAC, which is required by Chapters 74.39A and 18.88B RCW.
- Revisions to implement the fingerprint-based background check requirements in accordance with RCW 74.39A.055, which will be effective, January 1, 2012.
- Clarify the definitions and criminal history background check sections.

## **SMALL BUSINESS ECONOMIC IMPACT STATEMENT**

Chapter 19.85 RCW, The Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. This statute outlines information that must be included in a Small Business Economic Impact Statement (SBEIS). Under RCW 19.85.025 (3), preparation of a SBEIS is not required when proposed rule adopts or incorporates by reference without material change Washington state statutes and for rules with content dictated by statute. A SBEIS is required when there is a disproportionate impact on small businesses.

RCW 19.85.020 defines a "small business" as "any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees."

Since RCS is adopting these proposed rules in order to be consistent with state law (RCW 74.39A.055, and Chapters 74.39A and 18.88B RCW), a SBEIS is not required under RCW 34.05.310(4). The RCS rules are also being adopted in order to be consistent with proposed amendments to WAC Chapters 388-71 and 388-112, which are being adopted by DSHS's Home and Community Services division (HCS). RCS has reviewed and taken into consideration the Small Business Economic Impact Statement and Cost Benefit Analysis (SBEIS) submitted by HCS for its proposed amendments. The RCS rules require adult family homes to comply with the training requirements in WAC Chapter 388-112.

RCS has analyzed its proposed rules and has concluded that the content of the proposed rules is required by the state law. The long-term care worker training requirements are required by RCW 74.39A.073 and WAC Chapter 388-112. RCS is amending its rules to be consistent with the terminology and training requirements in chapter 388-112 WAC. Although some providers may decide to bear any increased training costs, the rules do not require the provider to do so. The proposed rules require fingerprint-based background checks in accordance with RCW 74.39A.055, which prohibits the department from passing the costs of these checks to the workers or their employers.

RCS has provided stakeholders several opportunities to give input on costs for the proposed rules. Stakeholders were asked at a meeting, sent emails requesting this information and drafts were posted on the internet. To date, RCS has not received comments about costs for these proposed rules.

In response to its request for input from stakeholders, the department has received general comments about the current background check rules. Providers are concerned that the current processing time for the background checks is increasing costs, because newly hired staff must not have unsupervised access to residents until their background check results have been received. RCS received one comment from a provider who was concerned that processing time will increase when the fingerprint background check requirement goes into effect. The proposed rules on fingerprint background checks will not go in to effect until January 1, 2012. It is impossible to definitively determine how long it will take the department to process background checks. The department has proposed solutions that are expected to be implemented before the effective date of the fingerprint background check rules.

RCS has not received any information indicating that the proposed rules will result in any job losses or gains for adult family homes. However, RCS has reviewed comments received by HCS and is aware that HCS has concluded that the proposed rule amendments disproportionately impact small businesses more than larger businesses. Further, RCS understands that HCS has plans to mitigate those costs.

## **EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS**

RCS has determined that some of the proposed rules are “significant legislative rules” as defined by legislature. However, under RCW 34.05.328(5)(b), an evaluation of the costs and benefits of adoption of the rule pursuant to RCW 34.05.328 is not required because the content of the rules is explicitly and specifically dictated by statute. RCS provides the following probable costs and probable benefits as background information.

### **Costs**

- DSHS shared the draft language and draft small business economic statement and cost benefit analysis with interested parties and stakeholder group.
- In addition, the draft language and draft small business economic statement and cost benefit analysis was posted on the Aging and Disability Services Administration internet website for anyone in the public to review and comment.

- DSHS' process is to use the input from internal and external stakeholders to determine cost impacts for the drafting of the rule.
- To date, no comments have been received about costs for these proposed rules. The department has received general comments about the current length of time it is taking to process background checks and that this was costing them money to provide direct supervision to newly hired staff.
- The statute states that the cost of the fingerprint checks will not be passed on to the individuals or the adult family home. The long-term care worker training requirements are required by RCW 74.39A.073 and chapter 388-112 WAC. We are amending our rules to be consistent with the terminology and training requirements in chapter 388-112 WAC.
- The training cost could be borne by either the provider or the staff person. The rules do not require the cost to be borne by the provider.

### **COST SAVINGS**

Although the proposed rules may not save providers money, they do have other anticipated benefits.

### **OTHER BENEFITS**

The proposed rules result in several benefits which include:

- The amendments are consistent with current laws;
- Adult family home providers will have more information to assist them in making hiring decisions; and
- Residents will ultimately benefit from a more trained workforce and potentially protected from staff with criminal histories.

### **CONCLUSION**

If a cost benefit analysis had been required, RCS would conclude that the benefits of the proposed amendments exceed the probable cost.

These rules are required to implement state laws and regulations related to adult family homes. RCS has complied with the appropriate sections of the Administrative Procedure Act and is prepared to proceed with the rule filing.

Please contact me by email at [torngmj@dshs.wa.gov](mailto:torngmj@dshs.wa.gov) or by telephone at (360) 725-3204 if you have questions.